

1982 S.C. Op. Att. Gen. 62 (S.C.A.G.), 1982 S.C. Op. Att. Gen. No. 82-59, 1982 WL 155028

Office of the Attorney General

State of South Carolina

Opinion No. 82-59

September 9, 1982

*1 Mr. David I. Tevelin
Acting Deputy General Counsel
Office of General Counsel
U. S. Department of Justice
Washington, D. C. 20531

Dear Mr. Tevelin:

Your letter of July 26, 1982, requests my assistance concerning the construction to be given to [Section 23-1-60 of the Code of Laws for South Carolina, 1976](#). You have forwarded a copy of a letter directed to Mr. Curtis H. Straub, II, and dated June 16, 1982, by C. Tolbert Goolsby, Jr., Deputy Attorney General of this Office, and inquire whether or not the conclusions reached by Mr. Goolsby are in accordance with my views.

The question concerns whether or not the Governor of this State may appoint constables pursuant to the provisions of [Section 23-1-60](#) and restrict their enforcement powers to specific laws. Your request specifically pointed to the use of the phrase 'any criminal laws' as used in the cited statute.

Mr. Goolsby's letter of June 16, 1982, concluded that no such authority is vested in the Governor and he cites in support of that conclusion the case of [State v. Luster, 178 S.C. 199, 182 S.E. 427 \(1935\)](#), and copies of various documents identified in his letter to you.

I agree with Mr. Goolsby's conclusion that this matter has not been reached by the South Carolina Supreme Court but I am not in accord with his conclusion that [Luster](#) sheds any light on the proper construction to be given to [Section 23-1-60](#). I agree also with his conclusion that the commission is mere evidence of the appointment but I do not see any benefit or value from consideration of the SLED credentials or their reference to letter of Nettie H. Bryan (a secretarial assistant to former Governor John C. West) and mistakenly dated 1979. (Mrs. Bryan served under former Governor West and the appointment of Mr. Archie C. Craft by former Governor West was in the manner noted by Mr. Goolsby, but that was done in 1971; subsequently, on March 2, 1979, the present Governor Riley appointed Mr. Craft, with specific restriction of his authority 'to the execution of duties in connection with operations within the South Carolina Department of Corrections.') The controlling nature of the appointment is clear to me. [See, Kottman v. Ayer, 2 Strob. Law 92 \(1848\)](#); [Macoy v. Curtis, 14 S.C. 376 \(1880\)](#); [Ex Parte Smith, 8 S.C. 515](#); [State v. Toomer, 7 Rich. 225](#); and [State v. Billy, a Slave, 2 N. & McC. 361 \(1820\)](#). The mere evidentiary nature of the commission vis-a-vis the appointment inevitably leads to the conclusion that the paramount governing document is the appointment, and the cases in the Supreme Court of this State and in the United States since [Marbury v. Madison](#) clearly so reflect.

Therefore, I am enclosing a copy of the appointment made by Governor Riley under which Mr. Craft was serving at the time of his decease. This restricts his duties to 'the execution of duties in connection with operations within the South Carolina Department of Corrections.'

*2 I am also enclosing a copy of the commission issued to Mr. Craft. Any credentials that may be issued by an agency of the State, such as SLED or the Department of Health and Environmental Control, the South Carolina Tax Commission, or any other agency of the State, cannot add to or take from the powers vested in the officer by the appointment of the Governor. I am also enclosing statistics regarding the number of constable commissions issued by the Governor annually (approximate), many

of which contain restrictive language similar to that used in Mr. Craft's appointment, as well as specimens of four of these. In my opinion, such widespread use by the office of the Governor cannot be disregarded in seeking the proper construction to be given to the phrase 'any criminal laws' as used in [Section 23-1-60](#).

I cannot say that Mr. Goolsby's conclusion that the Governor does not have any restrictive power because it is not granted by the statute is entirely erroneous but I am not in agreement with that conclusion. Any assessment which I would undertake to make would be based upon consideration of the duties being performed by the officer at the actual time of his death; that, of course, is a matter vested entirely in you in the administration of the Public Safety Officers' Benefits Act.

Your attention is directed to some matters of which this Office has had knowledge in connection with the incident of Mr. Craft's death. A workmen's compensation claim was filed with the South Carolina Industrial Commission and the defense of the claim was at that time vested in this Office. To entitle one to benefits under the Act, an injury must derive from an accident 'arising out of and in the course of employment.' The maximum death benefit at the time was in the amount of \$92,500 and the case was disposed of by payment to the claimants of the sum of approximately \$20,000.00. The proceedings in that action are in the files of the South Carolina Industrial Commission State Fund, as well as the South Carolina Department of Corrections, c/o Mr. Larry Batson, and Mr. Roberson and Mrs. Finuf of this Office have knowledge of the matter also. In addition to the foregoing, the individual who shot Mr. Craft was indicted and tried for murder in Lexington County, South Carolina, resulting in a mistrial; thereafter, he entered a plea of guilty to a lesser charge and was sentenced to life imprisonment, which he is now serving in the State of Florida, pursuant to statutory authority for the transfer of prisoners in such cases. I do not have the transcript of the trial nor of the proceedings under which the plea was entered but I am merely calling your attention to these matters as being of possible interest to you.

In summary, it is my view that the clearly controlling document vested in an appointee pursuant to the provisions of [Section 23-1-60](#) is the appointive document, and not the commission or credentials issued by an employing agency; that the Governor may restrict enforcement duties under [Section 23-1-60](#) to those laws which the appointee may be specifically authorized to enforce; and that, in the execution of those duties, the officer would have Statewide authority, but only with respect to the execution of the duties which he is authorized to perform. Whether or not Mr. Craft was in the performance of any of those duties at the time of his death is a matter upon which I do not express any opinion.

Very truly yours,

*3 Daniel R. McLeod
Attorney General

P. S. I am enclosing the comments made by Mr. Goolsby to me after having read this letter.

D.R.M.

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